

Tax Type: Property Tax
Issue: Charitable Ownership/Use

**HOMES OF HOPE CHARITABLE
FOUNDATION, INC.**

V.

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

RECOMMENDATION FOR DISPOSITION

Synopsis:

The hearing in these matters was held at the Willard Ice Building, 101 West Jefferson Street, Springfield, Illinois, on August 10, 1999, to determine whether or not McLean County Parcel Index No. 14-26-126-066 qualified for exemption for the 1996 and 1997 assessment years.

Ms. Vicki Hightower, Executive Director of Homes of Hope, Inc. (hereinafter referred to as "Homes") and Mr. Jim Gore, a member of the Board of Directors of Homes of Hope Charitable Foundation, Inc. (hereinafter referred to as the "Foundation") were present and testified on behalf of the Foundation.

During 1994, the parcel here in issue was given to the Foundation. The Foundation then

constructed a six bedroom two-story house on this parcel. The house was completed in the fall of 1995. Beginning in December 1995, five developmentally disabled women clients of Homes moved into this house. During 1996 and 1997 this house was operated by Homes as a Community Integrated Living Arrangement, (hereinafter referred to as a “CILA”).

The issues in this matter include: first, whether the Foundation owned this parcel during the 1996 and 1997 assessment years; secondly, whether the Foundation held this parcel and the house thereon in trust for the use and benefit of Homes; thirdly, whether Homes is a charitable organization; and lastly, whether Homes used this parcel for charitable purposes during the 1996 and 1997 assessment years.

Following the submission of all of the evidence and a review of the record, it is determined that the Foundation owned this parcel during the 1996 and 1997 assessment years. It is also determined that the Foundation held this parcel and the house thereon in trust for the use and benefit of Homes. It is further determined that Homes is a charitable organization. Finally it is determined that Homes used this parcel for charitable purposes during the 1996 and 1997 assessment years.

It is therefore recommended that McLean County Parcel Index No. 14-26-126-066 and the improvements thereon be exempt from real estate taxation for the 1996 and 1997 assessment years.

Findings of Fact:

1. The jurisdiction and position of the Illinois Department of Revenue, (hereinafter referred to as the “Department”) in this matter, namely that this parcel did not qualify for exemption for the 1996 and 1997 assessment years, was established by the admission in evidence of Department’s Exhibits Nos. 1 through 6A.

2. On March 27, 1997, and May 22, 1998, respectively, the McLean County Board of Review transmitted to the Department Applications for Property Tax Exemption To Board of Review concerning this parcel for the 1996 and 1997 assessment years. (Dept. Ex. Nos. 2 and 2D)

3. On October 8, 1998, and October 22, 1998, respectively, the Department advised the Foundation that it was denying the exemption of this parcel for the 1996 and 1997 assessment years for the reasons that that it was not in exempt ownership and also not in exempt use. (Dept. Ex. Nos. 3 & 3A)

4. By letters from the attorney for the Foundation dated November 3, 1998, and November 20, 1998, respectively, the Foundation requested formal hearings in these matters. (Dept. Ex. Nos. 4 & 4A)

5. The hearing in these matters conducted on August 10, 1999, was held pursuant to that request. (Dept. Ex. No. 5)

6. Homes was incorporated pursuant to the General Not For Profit Corporation Act of Illinois on September 19, 1991, for purposes which included the following:

To provide quality Christian homes for adults with developmental disabilities regardless of social, cultural or religious affiliations.
(Foundation Ex. No. 2)

7. The Foundation was incorporated pursuant to the General Not For Profit Corporation Act of Illinois on February 23, 1993. The mission statement of the Foundation, found in its bylaws, provides as follows:

The corporation is dedicated to providing assistance to Homes of Hope, Inc. in its provision for an operation of quality Christian homes for adults with developmental disabilities regardless of their social, cultural and/or religious affiliation. (Foundation Ex. No. 6)

8. The parcel here in issue was conveyed to the Foundation by a series of deeds and corrective deeds, the last of which was dated September 28, 1994. (Foundation Ex. No. 26)

9. On July 8, 1996, the Foundation leased this parcel to Homes for \$475.00 per month. The lease payment covers the principal and interest on the purchase money mortgage. The mortgage which secured the loan to the Foundation, was used to construct the house on this parcel. The lease payment also covers the real estate taxes, and insurance on the property. The lease was designed to pass through the monthly mortgage payment, real estate taxes and

insurance to the Foundation so that it can pay these obligations concerning the house on behalf of Homes. (Found. Ex. No. 22, Tr. pp. 45 & 46)

10. Pursuant to the lease, Homes agrees that it will not make use of the house on this parcel for any purpose other than as a residence for developmentally disabled adults. (Found. Ex. No. 22)

11. The Foundation built a six-bedroom residence on this parcel. The home was completed in November 1995. During December 1995, Frances Lukasiewicz and Patricia Irvin moved into the house. During January 1996, Tina Funk and Elizabeth Zook moved into the house. During June of 1996, Ruth Hoch moved into the residence. All 5 persons who lived in this house during the 1996 and 1997 assessment years were mentally disabled. (Tr. pp. 13 & 14)

12. All of the direct care needs of the residents were provided by the staff of Homes. The staff assisted the residents with the cooking, various daily living tasks, and keeping the house clean. (Tr. pp. 14 & 15)

13. The staff took the residents to do their personal shopping, transported them to the church of their choice, took them to the movies, and to other community activities. (Tr. p. 15)

14. Prospective residents of the house were first interviewed by a person called a pass agent. The pass agents, who were under contract to the Illinois Department of Mental Health and Developmental Disabilities, determined what persons would benefit from residing in a CILA. The board of Homes then reviewed the list of persons who were approved by the pass agent and attempted to pick potential residents based on their personalities and compatibility with the other residents. (Tr. pp. 15 & 16)

15. Each of the five residents of the house on this parcel received either a monthly social security check or a SSI check. Homes also received monthly payments from the Illinois Department of Mental Health and Developmental Disabilities for each resident. The amount paid by the State for each resident was a set amount tailored to each individual's disability and needs. (Tr. pp. 19 & 20)

16. The amounts received by Homes from social security and the State were to be used

for room and board for the residents. These payments also covered the costs of staff to work with the residents and to transport them in the community where they needed to go. Pursuant to CILA regulations the residents were allowed \$50.00 per month to use to buy personal items and for haircuts. This amount was insufficient to pay for those items or to pay for the resident's costs for outings. Additional funds for personal items, as well as the resident's costs for outings and special requests, came from funds of the Foundation which were transferred to Homes to be used for these purposes. (Tr. pp. 20-22)

17. The funds of the Foundation were also used to fund special requests for the residents. One of the residents asked to go on a trip. Funds from the Foundation were used to pay for the trip and to pay for a staff person to accompany the resident. One of the residents died who had no family. Funds from the Foundation were used to pay her funeral expenses. The funds from the State and social security are not sufficient to replace furniture or make repairs on the house. Funds from the Foundation are also used for these purposes. Periodically, the payments from the State are late and the Foundation transfers funds to Homes to allow it to operate until the funds are received from the State. When the funds are received from the State Homes reimburses the Foundation. (Tr. pp. 30, 31, & 57)

18. None of the residents of this house during 1996 or 1997 had any relatives providing any support. None of the residents has been asked to leave the home because their funding stopped. (Tr. pp. 26)

19. During 1996 and 1997 there were approximately 10 staff members who worked at the house on this parcel. There were always two staff members on duty except from 11:00 P. M. to 7:00 A. M. From 11:00 P. M. to 7:00 A. M. there was one awake midnight staff person on duty. (Tr. pp.28)

20. From July 1, 1996, through August 14, 1997, a staff person lived in the house on this parcel. Her name was Angie Eden. She was a member of the direct care staff of Homes. She worked 40 hours a week and was provided with full time benefits. Homes paid her for working 20 hours per week. In lieu of payment for the remaining 20 hours of work per week, she was

given room and board. Angie paid for her own phone, food, and extra cable TV features. She was on call 5 nights a week from 10:00 P.M. to 7:00 A.M. to provide emergency assistance to the awake midnight staff person. An example of emergency assistance might be if a resident became ill, supporting the staff person by either staying with the other residents or riding in the ambulance. In case of fire, it would take two persons to get all of the residents out of the house and Angie was there to assist the night staff person in case of fire. (Tr. pp. 29, 39 & 40)

21. The Foundation during 1996 and 1997 conducted several fundraisers for Homes including a quilt raffle and a Christmas parade of homes. At the end of each year, the Foundation sent out a mailing soliciting donations for Homes. (Tr. pp. 51 & 52)

23. All of the funds of the Foundation are used to support the activities of Homes. (Found. Ex. Nos. 12 & 13, Tr. pp. 60 & 61)

Conclusions of Law:

Article IX, §6 of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992)

Concerning charitable organizations, 35 **ILCS** 200/15-65 provides in part as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

- (a) institutions of public charity;
- (b) beneficent and charitable organizations incorporated in any state of the United States,

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v.

Brenza, 8 Ill.2d 141 (1956); Milward v. Paschen, 16 Ill.2d 302 (1959); and Cook County Collector v. National College of Education, 41 Ill.App.3d 633 (1st Dist. 1976). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944) and People ex rel. Lloyd v. University of Illinois, 357 Ill. 369 (1934). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967); Girl Scouts of DuPage County Council, Inc. v. Department of Revenue, 189 Ill.App.3d 858 (2nd Dist. 1989) and Board of Certified Safety Professionals v. Johnson, 112 Ill.2d 542 (1986). From the foregoing cases it is clear that the burden of proof is on the one seeking the exemption to establish that it is entitled to the exemption.

I conclude that the Foundation has established that it owned the parcel here in issue during the entire 1996 and 1997 assessment years.

The Foundation leases this parcel and the six-bedroom house to Homes. The lease payment is a pass through of the mortgage payment and a reserve for real estate taxes and insurance from Homes to the Foundation. There is no additional amount in the lease payment. In the lease, Homes agrees to only use the leased house on this parcel as a residence for mentally disabled adults. The mission statement in the bylaws of the Foundation provides that it is dedicated to providing assistance to Homes in its mission of providing quality Christian homes for adults with developmental disabilities. During 1996 and 1997, Homes was in total possession and control of the house on this parcel and used it as a CILA for five developmentally disabled adult women. I conclude that pursuant to the mission statement in the bylaws of the Foundation and the lease between the Foundation and Homes that the Foundation during 1996 and 1997 held this parcel in trust for the use and benefit of Homes. The Illinois Courts have held that property will qualify for exemption where it is held by an organization in trust for the use and benefit of an exempt organization. *See* People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944). *See also* Community Mental Health Council, Inc. v. Department of Revenue,

186 Ill.App.3d 73 (1st Dist. 1989). In the case of Southern Illinois University Foundation v. Booker, 98 Ill.App.3d 1062 (5th Dist. 1981) the Court determined as follows:

The key elements of ownership are control and the right to enjoy the benefits of the property.

Since Homes controlled the property and the right to enjoy the benefits, I conclude that the Foundation owned this parcel and the residence located thereon which were held in trust for Homes during the 1996 and 1997 assessment years.

In the case of Methodist Old Peoples Home v. Korzen, 39 Ill.2d 149 (1968), the Illinois Supreme Court laid down five guidelines to be used in determining whether or not an organization is charitable. Those five guidelines read as follows: (1) the benefits derived are for an indefinite number of persons; (2) the organization has no capital, capital stock, or shareholders, and does not profit from the enterprise; (3) funds are derived mainly from private and public charity, and are held in trust for the objects and purposes expressed in its charter; (4) charity is dispensed to all who need and apply for it; and (5) no obstacles are placed in the way of those seeking the benefits. The benefits of Homes, I conclude, are available to any developmentally disabled person who can benefit from living in a CILA facility. Since Homes is a Not For Profit Corporation, I conclude, that it has no capital, capital stock, or shareholders, and does not profit from the enterprise. The funds of Homes are derived from the Department of Mental Health and Developmental Disabilities, the Social Security Administration, and charitable contributions which are received by the Foundation and transferred to Homes. Thus, funds are derived mainly from private and public charity and held in trust for the objects expressed in its charter. In view of the fact that the residents of this CILA have no funds, are accepted in that condition, and are not discharged if their public funding stops, I conclude that fees are waived or reduced in cases of need. Consequently I conclude that charity is dispensed to all who need and apply for it, and that no obstacles are placed in the way of those seeking the benefits. I therefore conclude that Homes is a charitable organization.

Homes used the house on the parcel here in issue to train five developmentally disabled

women to live more independently than they had previously. Homes used not only the State and social security funds in this endeavor, but also charitable funds transferred to Homes from the Foundation.

I therefore conclude that the house on this parcel was used for charitable purposes during the 1996 and 1997 assessment years.

Concerning the one staff person, Angie Eden who lived in the house on this parcel during the period July 1, 1996, through August 14, 1997, she was required as a condition of employment to live there to be available to assist the awake night staff in case of emergencies. In the case of MacMurray College v. Wright, 38 Ill.2d 272 (1967), the Supreme Court considered whether or not faculty and staff housing owned by a college was used for school purposes. In that case, the Court applied a two-part test. First, were the residents of the houses required to live in their residences because of their exempt duties for the college, and/or were they required to or did they perform any of their exempt duties there? In this case I conclude that Angie Eden was required to live in the house because of her exempt duties for Homes, namely being present to assist the night awake staff person in case of emergencies.

I consequently recommend that McLean County Parcel Index No. 14-26-126-066 and the improvements thereon be exempt from real estate taxation for the 1996 and 1997 assessment years.

Respectfully Submitted,

George H. Nafziger
Administrative Law Judge
March 21, 2000